IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

WP(C).No. 10693 of 2007(W)

PETITIONER:

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1. P.O.MUSTAFFA, P.I.MANZIL,
BEACH ROAD, KOZHIKODE.

2. P.O.BASHEER, SASNA,
BEACH ROAD, KOZHIKODE.

3. P.O.HASHIM,
SASNA, BEACH ROAD, KOZHIKODE.

BY ADV. SMT.ZEENA S.FERNANDEZ
SMT.GEETHA JOB(OZHUKAYIL)
SRI.SURESH WILFRED

RESPONDENTS:

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1. SECRETARY,
CORPORATION OF KOZHIKODE, CORPORATION OFFICE,
KOZHIKODE.

2. CORPORATION OF KOZHIKODE,
REPRESENTED BY THE SECRETARY,
CORPORATION OFFICE, KOZHIKODE.

3. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, TOWN PLANNING LOCAL SELF GOVERNMENT
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

ADDL.*4. CALICUT DEVELOPMENT AUTHORITY
KOZHIKODE
(ADDL. R4 IS IMPLEADED SUO MOTU AS PER ORDER DATED 28-3-2007)

BY ADV. SRI.P.V.KUNHIKRISHNAN,SC,KOZHIKODE CORPORATION
ADV.SRI.C.M.SURESH BABU SC FOR R2
GOVT.PLEADER SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 10693 OF 2007 APPENDIX

PETITIONER'S EXHIBITS

Ext.P1: A true copy of the application submitted by the 1st petitioner dated 25-11-2006 for grant of building permit with translation

Ext.P2: A true copy of the application submitted by the 2nd and 3rd petitioners dated 25-11-2006 for grant of building permit with translation

Ext.P3: A True copy of the notice No.E4/43870/06 dated 23/2/2007 issued by the 1st respondent

Ext.P4: A true copy of Notice No.E4/43807 dated 5/3/2007 issued by the 1st respondent

Ext.P5: A true copy of the site plan of Ward No.17 (T.S. No.406 to 433) showing Buildings and roads.

Ext.P6: A true copy of Judgment in OP No.9773/1987-L by this Hon'ble Court dated 17th Feb. 1988

Ext.P7: A true copy of Judgment in OP No.16239/1994-C by this Hon'ble Court dated 20th Dec 1994

Ext.P8: A true copy of Judgment in OP No.10102/1995 -C by this Hon'ble Court dated 28th July 1995

Ext:P9: A true copy of Judgment in WP(C) No.20315/2005(R) by this Hon'ble Court dated 7th Nov.2005

Ext.P10: A true copy of judgment in WP(C) No.8874 of 2006 (F) by this Hon'ble Court dated 16hth June 2006

//True copy//

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K.M.JOSEPH. J.

W.P.(C) No. 10693 of 2007

Dated this the 31st day of May 2007

JUDGMENT

The case of the petitioners in brief as follows

The 1st petitioner is the absolute owner in possession of 32 cents in Ward No.17, Block No.12 in T.S. No.424/1 and 2nd and 3rd petitioners are in possession of 20 cents in T.S. No. 424 of Kasba Amsom, Karekunnam desom of Kozhikode Corporation. There was a proposal to acquire the petitioners property in the year 1981 . But it was dropped after 13 years. Thereafter there was a proposal to acquire the land in an extent of 4 acres , 96.8 cents excluding certain properties. But in the proposal in the year 1994 the property of the petitioners were excluded. On 03-04-1995 the petitioner submitted an application with required plan for granting permission to construct a commercial building. That application was rejected by the Calicut Development Authority stating that proposed building was within the residential zone notified in the Detailed Town Planning Scheme

2. Thereafter the petitioners filed second application to construct residential building in the above plot which was rejected on 03-07-2006 with the endorsement that " Additional area reserved for public use like

School, Bus stand office etc" included in the above division and is in violation of " Zonal Regulation Rules". That was challenged before the Tribunal for Local Self Government Institutions, Thiruvananthapuram, and the matter was directed to be re-considered. As per the direction of the Tribunal the petitioners submitted applications (Exts P1 & P2). That applications were rejected vide Exts P3 and P4 stating that it cannot be considered as the Master Plan sill in force and certain portion of the prescribed place of construction as recognized by the Detailed Town Planning Scheme, falls within " Additional area reserved public uses like School, Bus stand, Office etc." and the remaining portion comes under the category of residential area. Petitioners made enquiry and it is their further case that the Detailed Town planning Scheme came into existence as early as 2-7-1970. More that 37 years have elapsed. The scheme has not been implemented, even after a long period of time. It is pointed out.

3. It is submitted that the petitioners' property is on all sides surrounded by multi-storeyed commercial buildings and there is no vacant place left. Ext.P5 produced is the true copy of the site plan. Petitioners rely on Exts P6 to P10 which are various judgments of this Court passed in other cases. Persons have been permitted to put up where this court has granted permission ignoring the provisions in the DTP Scheme.

4. It is stated in ground No.10. in the writ petition as follows:-

The petitioners undertake to make any amendments to the plan and rectify if it is found that there is any difference in the alignment to the proposed foot path. So long as the offending Scheme is in force the petitioners will not be able to make any construction in the property in question. In this view of the matter the petitioners confines their challenge to the provisions of the scheme as the other objections pointed out in Ext.P3 and P4 are only curable.

5. Petitioners submit that they may be permitted to made construction at their risk . I feel that particularly having regard to the fact that 37 years have elapsed after the DTP scheme has came into existence and it is not being implemented even after a long period of time, the case of the petitioner should be considered. Exts.P3 and P4 should stand quashed. I do so. Respondents 1 &2 shall take a decision on the application without pressing into service the provisions of the Scheme. It is made clear that it is open to the respondents to get a declaration from the petitioners in terms of ground No.10 apart from the statement that construction will be carried out by the petitioners at their risk A decision shall be taken within six weeks from the date of production of a copy of this judgment.

K.M.JOSEPH,JUDGE

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